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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,266	06/27/2003	Karen E. Redfield	20862.00	4743

7590 06/24/2004  
Karen E. Redfield  
4012 Friday Avenue  
Everett, WA 98201

EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/607,266

Applicant(s)

REDFIELD ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 27 June 2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Acknowledgement is made of Applicant's IDS received 27 June 2003 and Revocation of Power of Attorney received 26 May 2004.

#### ***Election/Restrictions***

Applicant's election with traverse of Invention I (Claims 1-9) in the reply received on 4 June 2004 is acknowledged. The traversal is on the ground(s) that the search and examination of both inventions would not be a burden on the Examiner. This is not found persuasive because since the two definitions are properly classified in different classes (classes 47 and 264) to do more than one invention would necessitate searching in more classes. Thus, examination of the complete application would be burden on the Examiner. Claims 10-20 are withdrawn from examination.

The requirement is still deemed proper and is therefore made FINAL.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 7 are rejected under 35 U.S.C. §102(b) as being anticipated by Wente (US 5,381,625).

Art Unit: 3643

As to Claims 1 and 7, Wentz discloses a grow pole (Figs. 1-7) for containing plants (Fig. 1) comprising an elongated tube (11 and 30 of Figs. 1 and 6) having a top end and a bottom end; the tube having a plurality of portals (18 of Figs. 1, 2, and 6) in a spiral configuration (shown in Figs. 1 and 2) defined therein, each portal being sized and dimensioned for receiving plants (see Fig. 1); and an end cap (12 of Figs. 1 and 2) disposed on the bottom end of the tube, and a pair of apertures in the top end of the tube (16 of Fig. 4).

As to Claim 2, Wentz further discloses the tube with a plurality of ventilation holes (33 of Figs. 5 and 6).

As to Claim 3, Wentz further discloses a means for suspending the pole from a support (15 and 16 of Figs. 1 and 2).

### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6, 8, and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wentz (US 5,381,625) in view of Faris (US 4,373,695).

As to Claim 4, the limitations of Claim 4 are disclosed as described above. Not disclosed is the means of suspension comprising a pair of eyebolts attached to the top end of the tube.

Faris, however, discloses a pair of eyebolts (shown in Fig. 1 around element 16) for a planter.

Because eyebolts and hanger holes were art-recognized equivalents at the time of the invention

Art Unit: 3643

in those hanger grow poles where it is immaterial as the exact type of hanger system, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the hanger holes of Wentz with the eyebolts of Faris in the grow pole of Wentz.

As to Claims 5 and 6, Wentz as modified by Faris further disclose an eyebolt attached to the back of the tube (shown in Fig. 1 of Faris).

As to Claim 8, the limitations of Claim 7 are disclosed as described above. Not disclosed are a pair of eyebolts received in the opposed apertures in the top of tube. Faris, however, discloses a pair of eyebolts (shown in Fig. 1 around element 16) in the top end of a planter. Because eyebolts and hanger holes were art-recognized equivalents at the time of the invention in those hanger grow poles where it is immaterial as the exact type of hanger system, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the hanger holes of Wentz with the eyebolts of Faris in the grow pole of Wentz.

As to Claim 9, Wentz as modified by Faris further disclose an eyebolt attached to the back of the tube (shown in Fig. 1 of Faris).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Harvey, Green Jr., Green, and Pusey disclose in the prior art various grow poles. Redfield et al. discloses the instant application's pre-grant publication.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The

Application/Control Number: 10/607,266

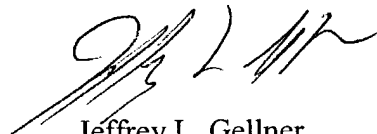
Page 5

Art Unit: 3643

Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner